THE ULTIMATE GUIDE TO MAKING A PERSONAL INJURY CLAIM



HOW TO DEAL WITH INSURANCE COMPANIES TO GET THE BEST OUTCOME FOR YOUR INJURY CASE

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THE ULTIMATE GUIDE TO MAKING A PERSONAL INJURY CLAIM

How to Deal with Insurance Companies to Get the Best Outcome for Your Injury Case

Second Edition

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Introduction

You've been injured, and you want to make a personal injury claim. You're unsure how to start the process, or you are dealing with an insurance company that wants to deny your claim and give you as little money as possible. So what do you do next?

As an injury lawyer, I see firsthand how difficult it is for injury victims to navigate the complex world of insurance claims. A common belief is that insurance companies are your friends. The truth is: they are not. They are businesses, focused on their own bottom line, and they use tactics like recorded statements, lowball offers, delay, and teams of adjusters and defense lawyers to reduce or deny claims made against them.

The Ultimate Guide to Making a Personal Injury Claim gives injury victims the knowledge they need to be proactive. It covers how insurance companies handle claims, what you need to do from the day of the accident forward, the tools insurance companies use to deny or limit claims, and how to get the best outcome for your case. It is written for people who have been hurt by someone else's negligence, whether in a car crash, a slip and fall, a dog bite, or another accident. If you were hurt by someone's intentional act, you need to speak with an attorney about your case.

Who this book is for, and where it applies

I first wrote this book for injury victims in California. Since then, our firm has expanded, and the people reading this book live in many different states. This second edition explains the claims process in terms that apply across the country. Where the law differs from state to state—deadlines, fault rules, insurance requirements—I explain the general rule and use California, and in many places Washington, as examples. Always confirm the rules in your own state.

My honest advice about lawyers

I will be direct with you. My advice is that anyone with a real injury should have an experienced personal injury attorney. Insurance companies have adjusters, investigators, and lawyers working against your claim. You should have a professional on your side, too. A widely cited reader survey by Martindale-Nolo Research found that more than nine out of ten readers who hired a lawyer received a settlement or award, compared with only about half of those who handled their own claims. Surveys like this have limits—the people who answered were already looking for legal help—but the pattern matches what I see in my practice every day.

At the same time, this book is meant to be useful even if you decide to handle your claim on your own. I will show you each step the way a lawyer would approach it. As you read, you will also see how many places a claim can go wrong. That is the point: once you understand how complex the process really is, you can make an informed decision about whether to hire help—and when.

Why it matters

When negligent parties and their insurance companies are held accountable, they are less likely to repeat their careless conduct, and others in the community learn that this behavior will not be tolerated. When victims are fully compensated, they can take care of themselves and their families. An educated public that knows how to make a claim is better able to counter unfair insurance tactics and make communities safer.

Two examples from my practice

Example 1: After a car crash, a former client tried to resolve the claim with the insurance company without an attorney. The highest offer was $10,000, which included money owed for outstanding medical bills, so the client would have been left with less than $5,000. Shortly after our firm got involved, we resolved the claim for the full policy limits of $100,000. After paying all medical bills and attorney fees, the client walked away with over $50,000.

Example 2: Our clients exited a freeway offramp and made a left turn on a green light. The defendant ran the red light and t-boned our clients. A witness saw it and called the police, but no traffic collision report was made. The defendant and their insurance company later denied liability

and claimed the defendant had the green light. The clients' previous attorney dropped the case. We were retained, located the witness, and obtained a signed declaration confirming that the defendant ran the red light. Armed with this evidence, we filed a lawsuit, and the insurance company quickly settled for the policy limits.

> **Note**
>
> *These are results from past cases. Every case is different, and past results do not guarantee or predict a similar outcome in your case.*

You will find two more of our cases—a premises liability case and a car crash case, each resolved for more than $1 million after the insurer first denied liability—in Chapters 4 and 7.

How to use this book

Act quickly. Every day you are not working on your case, evidence can be lost, and every state sets a deadline to bring your claim. At the same time, do not accept a quick settlement offer before you know the full extent of your injuries. Follow the steps in this book to build your evidence before you negotiate.

I recommend reading the book once from start to finish, then using it as a reference. Each chapter ends with key takeaways, and the appendix contains checklists, templates, and a quick reference of important deadlines. If you have questions after reading, feel free to email me at jamal@jsminjuryfirm.com.

Chapter 1

Identifying the Problem

Personal injury victims are often at the mercy of insurance companies, because after an accident, injured persons must navigate the personal injury insurance claims process. This includes knowing how to deal with insurance companies that take advantage of people unfamiliar with the process.

Think about it: when an insurance sales representative sells an auto policy, they never tell the purchaser how to most effectively file a claim after a car accident. Insurance companies spend millions every year on commercials promoting ideas like "you're in good hands" and "like a good neighbor," but they do not explain the claims process. Insurers have little reason to educate the public, because people who understand the process are much more likely to get full and fair compensation for their injuries.

This means injured victims need to equip themselves with knowledge of the process. Insurance companies know how the system works and use that knowledge to deny legitimate claims or limit how much victims receive. Adjusters are often polite and seemingly helpful, but their job is to resolve the claim for as little as possible. Most people do not know what information and documentation are needed to prove fault and damages in a personal injury case. The result is that the claims process often intimidates or confuses injury victims, and they accept lowball settlement offers or give up after wrongful claim denials.

To deal with insurance companies, you must first understand how they work. In this chapter, we start with the insurance company business model—as usual, to understand the motives of a company, you have to follow the money. Then we explain why that business model rewards denying or limiting claims, how insurers use software to value claims,

and the assumptions about injury victims that insurers rely on. You can only achieve the best outcome for your case by overcoming these assumptions.

How insurance companies work

When someone buys insurance, they are essentially paying into a pool of money that pays for damages and liabilities that may occur. What the purchaser is buying is a promise from the insurance company to pay if something bad happens, like a car accident. The insurance company promises to pay for "covered losses," and the person with the insurance promises to pay the insurance company a "premium." An insurance contract, or policy, is that promise reduced to writing. Throughout this book, the insurance company may also be called the insurer or carrier, and the person who buys insurance is called the insured. The injured person making a claim is called the claimant.

A covered loss is an event specified in the insurance contract that makes the insured or someone else eligible for compensation from the insurance company. Covered losses can include damage to property, injuries, and even death. For example, if you are driving and cause a rear-end accident, the other driver is likely to have damage to their vehicle and perhaps injuries. Because that is a covered loss under your auto policy, your insurer should compensate the other driver for those losses. A loss must be covered under the insurance contract for the insurance company to be required to pay.

An insurance premium is the amount of money a customer pays to an insurance company in return for the promise of coverage. The premium is calculated by considering the risk exposure and the desired coverage.

The insured pays the premium because most people could not afford to pay for a serious loss on their own. If you cause a car accident and the other driver is badly hurt, their medical bills alone could be more than most people could pay out of pocket. The insured buys the policy specifically to shift that financial risk to the insurance company. The insurance company, therefore, has a duty to act in good faith toward its insured when handling claims, and it is reasonable for the insured to expect the insurer to settle a valid claim against them.

When an injured person makes an insurance claim, they are supposed to be treated fairly. The insurance company is supposed to investigate the loss, determine whether it is covered, identify who is responsible, and pay the injured person fair compensation within a reasonable time, so that everyone can move on with their lives. Unfortunately, it does not

always work like this.

Why insurance companies deny, delay or limit claims

The business model for an insurer is simple. The insurance carrier makes money by collecting premiums from its customers. Insurers invest the money they collect until the time comes when they have to pay out claims. Collecting premiums ensures a steady stream of cash flow, while investing that money makes the insurance company even more money.

Insurance companies must turn a profit, just like any other company. If an insurer pays out more on claims than it collects in premiums during the same period, that is a loss. The goal of any business is to minimize costs while maximizing revenue—and for an insurer, claims are the biggest cost. That is why it can be hard to get full value for your claim without help.

Some of the biggest insurance companies are publicly traded, including Berkshire Hathaway (which owns GEICO), Travelers, Allstate, and Progressive. Publicly traded companies answer to their shareholders, and the pressure to turn a profit can conflict with the duty to fairly and promptly pay legitimate claims. So while you might think your insurance company is looking out for you after an accident, it is looking out for its own financial interests first.

Insurance companies reduce what they pay in several ways, including denying legitimate claims, delaying payment, and offering lowball settlements. In general, claim denials come in two types: coverage denials and liability denials.

Coverage denials are when the insurance company says there is no coverage for the claim, meaning the policy doesn't cover what happened. If you disagree, it's time to have an attorney read the policy—and your state's laws—to determine whether coverage exists.

Liability denials are when the insurance company says its insured was not negligent in causing your injury. This may seem like a simple dispute, but insurers often deny liability based on technicalities that need to be carefully examined by an attorney.

Delay is another way insurance companies reduce the amount they pay. Delay wears down the victim and increases the chances they will give up or accept less. Delay tactics include demanding records that are hard or slow to get, questioning whether the injured person is really as hurt as they say, and making lowball offers based on red herrings in the medical records. These tactics force a victim to spend more time and money, make the victim wonder if it's worth it, and make them more

likely to accept a smaller settlement. Meanwhile, the insurance company keeps the money invested.

For example, suppose your case is worth $100,000, and the insurance company delays paying you for two years. If the insurer earns a 5% return on that money, it makes about $10,250 over those two years from your $100,000 claim. Multiply that across thousands of claims, and delay becomes very profitable. And when inflation is factored in, the $100,000 you receive two years later is worth less than $100,000 today.

How insurers put a number on your claim

Many large insurance companies use claim-evaluation software to help value injury claims. The best-known program is called Colossus, and there are others like it. The adjuster enters information from your medical records—diagnosis codes, types of treatment, number of visits, gaps in care, and whether a doctor documented lasting effects—and the software produces a settlement range. The adjuster is usually expected to stay within that range unless there is a good reason to go outside it.

This matters to you for three reasons. First, what is written in your medical records counts far more than what you say on the phone. If your doctor never writes down that your pain keeps you from lifting your child or doing your job, the software may never "see" it. Second, gaps in treatment and missed appointments push the number down. Third, the things that make your case unique—your story, your life before and after the accident—are exactly what software is worst at valuing. A good demand letter, and if necessary a lawsuit, puts those human losses in front of people instead of a program.

Assumptions insurance companies rely on

Insurance companies rely on a few key assumptions about injury victims. The first is that most people do not understand the claims process or their rights. That lack of understanding lets the insurer use its superior knowledge to lowball or deny a claim. The second is that most people do not want the hassle of hiring an attorney and going to court. This is why insurers often make lowball offers early, knowing many people will accept them. The third is that people will give up if their claim is denied or payment is delayed.

As an injury victim, you must avoid making these assumptions come true. The best way to do this is to educate yourself about the claims process, hire an experienced personal injury attorney to fight for the

compensation you deserve, and stay involved in your case. Do not rely solely on your attorney—understand what is happening every step of the way.

Key Takeaways

- Insurance companies make money by collecting premiums, investing them, and paying out as little and as late as possible on claims.
- Claim denials usually come in two forms: coverage denials and liability denials. Both can be challenged.
- Many insurers use software like Colossus to value claims, so what your medical records say matters enormously.
- Insurers assume you don't know the process, don't want a lawyer, and will give up. Prove them wrong.

Chapter 2

The Importance of Making a Personal Injury Claim

One day, a young woman was driving to work when she approached an intersection she had driven through many times before. The intersection had a four-way stop sign. She stopped and then made her way through, as she would any other time, but this time another car entered the intersection without stopping. The other driver did not see the stop sign because they were texting while driving. The woman didn't have time to react, and the cars collided. Both drivers suffered severe, life-changing injuries that required emergency medical attention.

The woman was unable to work because of her injuries, so she lost her job and her income. Faced with this difficult situation, she decided to speak to a personal injury attorney about her options.

Why should you make a personal injury claim?

Making a personal injury claim is important for two reasons. First, it allows injured victims to get the compensation they need to cover the costs of their injuries and get their lives back on track, including medical expenses, lost wages, and pain and suffering. Second, it helps make the community safer. In the case of the young woman above, her claim against the driver who ran the stop sign may make that driver more careful in the future, and it reinforces important safety rules: people who text and drive, or fail to stop at a stop sign, will be held accountable.

It is similar to a speeding ticket. Not everyone who speeds gets a ticket. But when people see someone pulled over and ticketed, they are less likely to speed. Similarly, when an at-fault driver is held accountable

in a personal injury claim, it sends a message to others. The same is true for a negligent property owner. When a store is held accountable for a dangerous condition, other property owners take notice and fix their hazards. Over time, these cases change what behavior is considered acceptable and keep people in your community safe from harm.

It is important to remember these two reasons whenever you doubt whether you should make a claim after an accident.

What is a personal injury claim?

When someone is injured due to the negligence of another person, they may be able to make a personal injury claim, usually with the responsible party's insurance company. The claim can allow the victim to receive compensation for their damages, which can include medical expenses, lost wages, and pain and suffering.

Common types of personal injury claims include:

- Motor vehicle accidents, including cars, trucks, motorcycles, rideshare vehicles, and buses.
- Pedestrian and bicycle accidents, including e-bikes and scooters.
- Slip and falls and other injuries caused by dangerous conditions on property (premises liability).
- Dog bites and animal attacks.
- Defective products that cause injury (product liability).
- Wrongful death, when negligence causes the death of a loved one.

Other types of claims, such as medical malpractice and workplace injuries, follow their own special rules. This book focuses on the claims process that applies to most negligence cases, and Chapter 8 covers several special situations.

A personal injury claim involves legal processes with special rules. You will likely have to report the claim, provide information about what happened, and provide evidence of your injuries, such as medical records. You also only have a certain amount of time to make a claim. As you go through this book, you will learn about the rules that are part of the personal injury claim process.

Who can make a personal injury claim?

Anyone injured due to someone else's negligence can make a personal injury claim, but not everyone has what it takes to be successful. It is important to be honest about your accident and injuries. If you lie or exaggerate to get more money than you deserve, it will usually come back to hurt you. The insurance company and, more importantly, a jury may decide that you should not receive any money because of your dishonesty.

You also need to be ready for a fight. In many cases, the insurance company will not pay what your claim is worth unless you make them. An adjuster trying to limit your claim may try to intimidate or frustrate you. Knowing your legal rights and options and standing firm shows the adjuster that you are serious.

In summary, the most successful claims are usually those in which the victim is honest and prepared for a fight.

Who cannot make a personal injury claim?

If an accident was truly 100% your fault, you will not be able to make a personal injury claim against anyone else. For example, if you rear-ended the car in front of you at a stoplight, that is your fault, and you are generally not entitled to compensation from the other driver.

If you were only partly at fault, the answer depends on your state's fault rules. These rules decide how much you may receive if you share some of the blame. For example, let's say you are backing out of a parking spot and collide with another car. You are found to be 20% at fault because you failed to look behind you, and the other driver is 80% at fault because they were speeding through the parking lot and should have seen you. States handle this in three main ways:

- Pure comparative fault. Your compensation is reduced by your percentage of fault, but you can still recover even if you were mostly at fault. California and Washington follow this rule. In the example above, if your injuries were worth $100,000, you would receive $80,000.

- Modified comparative fault. Most states follow this rule. Your compensation is reduced by your percentage of fault, but you recover nothing if your fault reaches a certain level—usually 50% or 51%. Florida, for example, switched from pure to modified comparative fault in 2023, so a Florida claimant who is more than 50% at fault now recovers nothing.

- Contributory negligence. A handful of jurisdictions—Alabama, Maryland, North Carolina, Virginia, and Washington, D.C.—bar you from recovering anything if you were even 1% at fault, subject to limited exceptions.

These laws are complicated, and the insurance company will often try to push more of the blame onto you. Speak to an attorney about what your state's rule means for your case before you accept any finding of fault.

What is negligence, and how does it impact your claim?

You may think you know what negligence means, but it's not always as simple as it sounds.

Generally speaking, to be negligent means to have been careless in a way that causes injury or damage to someone else. A negligent person has usually broken a safety rule, often unintentionally, such as an established rule of the road. For instance, if you are crossing the street and someone drives through a red light and hits you, they were negligent. If they had followed the safety rules—driving at a safe speed and stopping at the light—they would not have hit you.

Legally speaking, negligence is a concept that an injured person must prove to receive compensation. The law of negligence involves four fundamental elements:

1. **Duty:** The negligent party must have owed a duty of care to the injured person. For example, a driver owes every other motorist and pedestrian on the road a duty to drive carefully, and a store owner owes customers a duty to keep the premises reasonably safe.
2. **Breach:** The negligent party must have breached that duty, meaning they did something careless (or failed to do something they should have done).
3. **Causation:** The breach must have caused the injury.
4. **Damages:** There must be damages—injuries or losses—resulting from the breach.

Although these elements seem straightforward, proving them can be difficult. The insurance company will often counter with arguments that sound reasonable, about liability, about whether the accident could have caused your injuries (the "mechanism of injury"), and about the nature and extent of your injuries. A knowledgeable personal injury attorney knows how to present the evidence on each element in your favor.

Key Takeaways

- A personal injury claim compensates you and helps make your community safer.
- Honesty is essential. Exaggeration can destroy an otherwise good claim.
- Your state's fault rule (pure comparative, modified comparative, or contributory negligence) can change how much you recover—or whether you recover at all.
- To win, you must prove duty, breach, causation, and damages.

Chapter 3

What to Do Immediately After an Injury-Causing Accident Occurs

So you've been injured in some kind of accident, and you're not sure what to do next. You might feel overwhelmed or confused, and that's normal. The most important thing you can do in the immediate aftermath of an accident is to get medical attention if you need it. Once you're sure you and everyone else involved are safe, you can start thinking about what to do next: report the accident, collect and preserve evidence, and be careful about what you say. Following these steps will make this confusing time a little more manageable. A one-page checklist of these steps is in the appendix.

Seek medical attention

If you're not sure whether you need medical attention, it's always better to err on the side of caution and get checked out by a doctor. Many injuries do not seem serious at first but turn out to be quite serious. Some of the most common injuries in car accidents, for example, are whiplash and spine injuries. Because of the adrenaline rush, you may not feel much pain right after the accident, but symptoms can develop and get worse in the hours, days and weeks that follow. Don't try to tough out your injuries. It's not worth the risk of further injury or disability. There are many reasons to seek medical attention first:

1. You might have a serious injury that requires immediate treatment,

such as broken bones or head trauma, or an injury that is not immediately apparent, such as internal bleeding or a concussion.

2. You will need evidence of your injuries to make a personal injury claim. Medical records documenting your injuries and treatment are the foundation of your claim, both in negotiations with the insurance company and in court before a judge or jury.

3. A gap between the accident and your first medical visit is one of the first things an insurance company looks for. The longer you wait, the easier it is for the insurer to argue that something else caused your injuries.

4. You can get treatment and pain relief that shouldn't be delayed.

Give your medical providers as much information about the accident and your injuries as possible. It is standard protocol for medical providers to take notes at each visit, including their observations of how your injuries affect your life. Since insurers and their software rely heavily on those records, make sure they are accurate. Do not downplay your injuries to seem tough, and do not exaggerate them to gain sympathy. Doctors are trained to identify malingering, which means making up or exaggerating symptoms for personal gain, and a finding of malingering can seriously hurt your case. Simply be honest about your injuries, pain, and symptoms, and let the medical professionals draw their own conclusions.

Lastly, an injured person has a duty to mitigate damages. This means you must take reasonable steps to keep your losses from getting worse, such as getting medical care and following your doctor's recommendations. Failing to do so can reduce your compensation.

Report the accident as soon as possible

Another important thing to do after an injury-causing accident is to report it. If you are in a car accident, call the police. If you are hurt at work, tell your supervisor. If you trip and fall because of a dangerous condition on someone else's property, report it to the property owner, manager, or tenant before you leave, and ask for a copy of the incident report.

Reporting an injury-causing accident is an essential step that many people forget when they are in shock. Insurance companies and courts look more favorably on people who report their injuries quickly. Some types of coverage also have strict reporting deadlines. Hit-and-run and other uninsured motorist claims are the most important example:

- In California, a hit-and-run uninsured motorist claim generally requires that the accident be reported to the police within 24 hours, that there was physical contact with the hit-and-run vehicle, and that you file a sworn statement with your insurance company within 30 days after that.
- In Washington, when there was no physical contact with the other vehicle (a "phantom vehicle"), the accident generally must be reported to law enforcement within 72 hours, and the facts must be supported by evidence other than your own testimony, such as an independent witness.
- Other states have their own rules, and your policy may add more. Read your policy, and report every hit-and-run to the police right away.

Sometimes the police come to the scene but do not write a report, or do not come at all. If that happens, you can usually file a report yourself afterward with the police department or, for traffic accidents in some states, with the state motor vehicle department. In California, for example, a driver involved in a crash that causes injury, death, or more than $1,000 in property damage generally must file an SR-1 report with the DMV within 10 days, regardless of fault. In Washington, unless a law enforcement officer makes the report, a driver involved in a crash causing injury, death, or property damage above the State Patrol's threshold generally must file a written report with the local police, sheriff, or State Patrol within four days. A missing police report does not mean you do not have a case. In one of the examples in the introduction, no report was ever made, and an independent witness was the key to proving what happened.

If you fail to report an accident, you may have a hard time proving it happened or that it caused your injuries. For example, when someone slips on a wet floor in a grocery store and leaves without reporting it, the manager may later testify that he checked the floors and they were dry. If there is no proof that an accident happened or how it happened, there is no evidence that the store was negligent.

Collect and preserve evidence

Another important thing to do after an injury-causing accident is collect and preserve evidence. Insurance companies often try to minimize your injuries by claiming they are pre-existing, not as bad as you say, or caused

by something else. Evidence is how you prove otherwise. Ways to collect evidence include:

1. Write down the facts of the accident while they are fresh. Leave the emotions out of it and stick to a timeline of exactly what happened.

2. Take photos and video of the scene, the vehicles or the hazard that caused your fall, and your injuries. If possible, also capture details that show where you were going. An insurance company, for example, may not believe a pedestrian's claim that they were on their way to work, but a photo of them in their work uniform helps prove it.

3. Photograph your injuries and the changes to your body, such as scars and bruises, at different stages of healing. Periodic photos show whether your injuries are improving or require additional treatment, such as scar revision by a plastic surgeon.

4. Get the names and contact information of any witnesses. Witnesses can be crucial. They can provide first-hand accounts of what happened and corroborate your story.

5. Collect and keep all relevant records, including medical records and bills, receipts, pay stubs, and any other documents that show the financial impact of your injuries.

6. Keep a journal of every way the injury has affected your life. Many injuries change the experience of doing things, not just whether you can do them. An injured person must constantly calculate whether a routine task is worth the risk of a flare-up. Activities that used to be easy or fun become difficult or stressful. Every small adjustment adds up to a big loss, so record these changes throughout the process. A journal template is in the appendix.

Video and data evidence disappears fast

Today, many accidents are captured on video or recorded in electronic data. This evidence can be the most powerful in your case, but it is often deleted or overwritten within days or weeks. Act quickly to identify and preserve:

- Dashcam footage, including from your vehicle, other drivers, rideshare vehicles, buses, and commercial trucks.

- Doorbell and home security cameras, such as Ring and Nest devices on nearby homes.
- Surveillance video from nearby businesses, gas stations, and traffic or transit cameras.
- Phone video and photos taken by you or witnesses, and the original files with their date and location data.
- Vehicle data. Most modern vehicles have an event data recorder ("black box") that captures speed, braking, and seatbelt use in the seconds before a crash. Many newer cars, including Teslas, also record camera footage and driving data. Commercial trucks often have additional tracking systems.

The usual way to protect this evidence is a written preservation letter sent to whoever holds it, asking them to save it. If the evidence belongs to the other side, a preservation letter puts them on notice that destroying it can have legal consequences. This is one of the most time-sensitive tasks in a case, and one of the strongest reasons to involve an attorney early. Do not let your own damaged vehicle be repaired, scrapped, or salvaged until you know whether its data or condition is needed as evidence.

Be careful with social media

Assume that the insurance company will look at your social media. Insurers and defense lawyers routinely search Facebook, Instagram, TikTok, and other platforms, and some hire investigators to watch or film claimants. A single photo of you smiling at a birthday party or carrying groceries can be used to argue that you are not really hurt, even if you paid for it with pain for days afterward.

- Stop posting about the accident, your injuries, your activities, and your case.
- Set your accounts to private, but understand that private posts can still be obtained in a lawsuit.
- Do not delete existing posts or accounts. Deleting evidence after an accident can be treated as destroying evidence and can seriously damage your case. Talk to your attorney first.
- Ask friends and family not to tag you or post about you.

- Do not accept new friend or follow requests from people you don't know.

Be careful with AI chatbots

Many people now ask AI chatbots like ChatGPT, Claude, or Gemini about their legal problems. These tools can help you understand general concepts, but be careful about using them for your claim.

First, they can be wrong. AI tools can give outdated or incorrect information about deadlines, coverage, and the law in your state, and they can invent legal citations that do not exist. Courts have sanctioned people for filing papers with made-up citations generated by AI.

Second, your conversations may not be private. Whether your chats with an AI tool can be obtained by the other side is an unsettled legal question, and courts are reaching different results:

- In United States v. Heppner, 820 F. Supp. 3d 292 (S.D.N.Y. 2026), a federal judge ruled that a criminal defendant's conversations with a public AI platform were not protected by the attorney-client privilege or the work-product doctrine, because the AI is not a lawyer, its privacy policy allowed his inputs to be shared, and his attorney had not directed him to use it.

- Other courts have gone the other way for people representing themselves. In Warner v. Gilbarco, Inc., 820 F. Supp. 3d 629 (E.D. Mich. 2026), and Morgan v. V2X, Inc., 2026 WL 864223 (D. Colo. Mar. 30, 2026), the courts held that a self-represented litigant's AI-assisted preparation for litigation was protected work product. These are trial-court decisions, and other courts may disagree.

Until the law settles, the safest approach is simple. Do not type the details of your accident, injuries, medical history, or conversations with your lawyer into a public AI chatbot without first asking your attorney. If you have a lawyer, let them decide whether and how AI tools should be used in your case.

Be careful what you say to insurance companies

After an accident, you will be contacted by insurance companies, including your own. The safest course is to speak with a personal injury attorney before you give any insurance company—including your own—a detailed account of the accident or your injuries, before you

give a recorded statement, and before you sign anything. You may say something that hurts your case simply because you don't know how it will be used. This includes your own insurer, because in some situations, like uninsured motorist claims, you will be seeking compensation from your own insurance company, and it may use what you said against you.

You do need to report the accident to your own insurance company promptly, as your policy requires. Keep that report to the basic facts—who, when, and where—and do not guess about fault or the extent of your injuries. Never admit fault.

If you do speak with an insurance company before you speak with an attorney, keep a log of every communication, including:

1. Who you spoke with;
2. When you spoke with them; and
3. What was said, including any statements you made about how the accident happened, your injuries, and your treatment.

Then type up a summary and email it to the person you spoke with to confirm what was discussed. This creates proof if the insurer later claims a conversation never happened or misstates what you said. A call log template is in the appendix. In Chapter 5, we go into depth on dealing with adjusters.

Key Takeaways

- Get medical attention first, and be honest and complete with your doctors.
- Report the accident promptly. Hit-and-run claims have very short reporting deadlines.
- Preserve video and vehicle data immediately; it is often gone within days or weeks.
- Stop posting on social media, but do not delete anything.
- Don't put your case details into public AI chatbots without asking your lawyer.
- Talk to a personal injury attorney before giving any insurer a detailed or recorded statement.

Chapter 4

Filing a Personal Injury Claim with the Insurance Company

Imagine you are crossing the street when suddenly you are hit by a car. You land with a thud and see the car speeding away. As you try to get up, you realize your leg is twisted at an odd angle, and you can't move it. A witness calls an ambulance, and the paramedics take you to the hospital. After a few tests, the doctors tell you that you have broken your leg and will need surgery. You can't afford to be laid up for months, unable to work and earn an income, and the medical bills are already piling up.

If the police find the driver, you will make a claim against the driver's insurance company. If they don't, or if the driver has no insurance, you may have to make an uninsured motorist claim with your own insurance company—which is why reporting the hit-and-run immediately matters so much. Either way, filing a personal injury claim can seem like a daunting task, especially if you have never done it before. In this chapter, we walk through the most important steps: opening a claim, gathering evidence, sending a demand letter, negotiating, and deciding whether to file a lawsuit.

Open up a claim with the insurance company

The first step is to report the accident to the insurance company for the responsible party and open a claim. If you have an attorney, the attorney will usually do this for you. The insurance company representative will take down information about you and what happened, and will then create a claim. The representative should give you a claim number, the name of the adjuster assigned to your claim, and the adjuster's contact information. Save this information, because you will use it throughout the process.

When you open the claim, give only truthful information, and only the basics. If you fail to mention something important or give inaccurate information, the insurance company may later use it to deny your claim or reduce what it pays. Only say what you know to be absolutely true. Do not guess, estimate, or speculate. Responding with "I do not know" or "I do not recall" is perfectly fine when it is true. It is best to have an attorney open the claim for you, or at least be on the call, so that your rights are protected.

After the claim is opened, send the adjuster a letter that includes requests:

1. For disclosure of the policy limits;
2. To confirm whether the insured was acting within the course and scope of employment at the time of the accident (if so, the employer and its insurance may also be responsible);
3. To preserve all evidence; and
4. To confirm that coverage and liability have been accepted.

Some states have rules that require insurers to disclose policy limits in certain situations, but many do not, and insurers often refuse until a lawsuit is filed. A sample of this letter is in the appendix. Remember to document every phone call with the insurance company.

Gather evidence to support your claim

One of the biggest reasons people fail to get full compensation is that they begin negotiating before they have all the evidence. You need evidence of your injuries, medical expenses, lost wages, out-of-pocket costs, and how the accident has affected your life.

Your medical records and bills are the core of your claim. They show the extent of your injuries and what treatment has cost. To develop these

records, follow your doctors' treatment recommendations and keep your appointments. If you skip treatment, the evidence will not exist, and it will be difficult to convince an insurance company or a jury of your injuries. Sometimes this means waiting weeks or months, until your treatment is complete or your doctors can say what your future looks like, before you negotiate. That may not be ideal, but it may be the only way to get fair compensation.

Other relevant evidence includes witness statements, photos and video, the police report, proof of lost wages, and anything else that supports your claim. Evidence can be lost over time, so start as soon as possible.

Attempting to resolve a case without all the evidence is a recipe for disaster. Insurance companies know this, which is why they try to settle good cases early, before you know how badly you are hurt or what the long-term impact of your injury will be. Once you settle, you cannot go back for more.

Send a settlement demand letter

After gathering your evidence, the next step is to send a demand letter to the insurance company. These letters are usually written by an attorney. A strong demand letter includes:

- A clear explanation of liability—how the accident happened and why the insured is responsible.
- A summary of your injuries and treatment, drawn from your medical records, including any future treatment your doctors recommend.
- Your economic damages, such as medical bills and lost wages, with supporting documents.
- Your non-economic damages, explained through concrete examples of how the injury has changed your daily life.
- A specific demand, or a demand for the policy limits.
- A deadline for a written response.

If you don't know the at-fault party's policy limits, the first demand should usually be a "policy limits" demand, meaning you ask the insurance company to pay the maximum coverage available, rather than a specific number. There are two primary reasons for this. First, it is likely the insurance company will offer less than the policy limits, so you

want room to negotiate. Second, the legal concept of insurance bad faith can sometimes allow an injured person to collect more than the policy limits if the insurer unreasonably refuses to settle. In general, to set up a bad faith claim, the injured person must give the insurance company a reasonable opportunity to settle for an amount within the policy limits when liability is reasonably clear and the damages likely exceed the limits. If you demand more than the policy limits, that opportunity is usually lost. Bad faith law differs from state to state and is complex, and the requirements for a valid policy limits demand can be technical. This is an area where an attorney is especially important. If you know the policy limits, you can make a demand for a specific amount equal to or less than those limits.

The demand letter should give the insurance company a reasonable deadline to respond—30 days is common. The insurance company will usually respond by asking for more time or more information, accepting the demand, denying it because it disputes coverage or liability, or making a counteroffer. A demand letter outline is in the appendix.

Negotiate a settlement

In cases where the response to a demand letter is a lowball offer, the next step is to negotiate. Keep these things in mind:

First, know what an acceptable offer is and be realistic about the value of your claim (we discuss calculating damages in Chapter 6). Second, adjusters may pressure you with statements like "this offer won't last" or "why don't we just settle now before things get worse for you?" These statements are designed to play on your fear. Third, if you cannot reach a fair settlement, you have the option of filing a lawsuit. Insurance companies often offer more after a lawsuit is filed than they did before.

Although you can negotiate your own case, I strongly recommend having an experienced personal injury attorney negotiate for you. Adjusters negotiate claims every day, and they are skilled at making low offers sound reasonable. They also know which claimants are ready to file a lawsuit and which are not. When an adjuster knows you have a lawyer who is prepared to go to court, your claim is taken more seriously.

Common insurance arguments, and how to answer them

Insurance companies use the same arguments again and again to justify low offers. Knowing them in advance lets you build the evidence to answer them before they come up.

"It was a low-impact accident." The insurer argues that because the property damage was minor, you could not have been hurt. But the amount of damage to a car does not reliably show the force transferred to the people inside it. Modern bumpers are designed to absorb impact without visible damage, and a person's age, prior condition, and body position at the moment of the crash all affect injury. The answer is medical evidence: consistent complaints from the first visit, objective findings like imaging results, and a treating doctor who will explain that the accident caused the injury.

"There was a gap in your treatment." If weeks pass between the accident and your first doctor's visit, or between appointments, the insurer will argue that something else caused your problems or that you recovered. Keep your appointments. If a gap is unavoidable—because you couldn't get time off work, lacked insurance, or were waiting for an authorization—write down the reason and tell your doctor, so it appears in your records.

"Your injuries are pre-existing." Insurers comb through your medical history looking for prior complaints in the same body part. A pre-existing condition does not defeat your claim. In most states, a defendant is responsible for making a pre-existing condition worse, and must take you as they find you, even if you were more vulnerable to injury than the average person. The key is a doctor who can explain the difference between your condition before and after the accident.

"Your treatment was excessive." The insurer may argue that you had too many therapy visits, that a procedure was unnecessary, or that your providers charged too much. Follow your doctors' recommendations, and make sure your records explain why each treatment was needed. If a doctor recommends surgery, ask them to document the reasons in writing.

"You weren't really hurt—look at your social media." As discussed in Chapter 3, assume the insurer is looking. Stop posting, and don't delete anything.

"You were partly at fault." Insurers often assign some fault to the claimant to reduce the offer, even when the evidence doesn't support it. Ask for the basis in writing. Witness statements, video, and the police report are your best answers.

For each argument, the response is the same: evidence, gathered early. This is also why an attorney who knows the insurer's playbook can anticipate these arguments and address them in the demand letter before the adjuster raises them.

A case from our files: the left turn the insurer blamed on our client

Our client was driving through an intersection when the defendant made a left turn on a yellow light, directly into our client's path, causing a major collision. Our client suffered serious neck and back injuries, underwent neck surgery, and was later recommended a lumbar spinal cord stimulator.

The insurance company denied liability and blamed our client for the crash. It made no offer before the lawsuit was filed. When we served our initial settlement demands in the lawsuit, it responded with a lowball offer and questioned how badly our client was really hurt—two of the arguments described above.

We answered each argument with evidence. We investigated the crash to prove who was at fault, retained experts, and filed and prosecuted the lawsuit. We made a policy limits demand to set up a potential bad faith claim, negotiated down the medical liens, and prepared the case for trial. The case settled for $1.25 million.

Why an attorney mattered: someone handling this claim alone would have faced a liability denial, no offer at all, and an insurer questioning their injuries, without the ability to retain experts, use the tools of a lawsuit, or put a trial date on the calendar. The lawsuit, the evidence, and the trial preparation are what changed the insurance company's evaluation.

> **Note**
>
> *This is a past result shared with our client's permission. Every case is different, and past results do not guarantee or predict a similar outcome in your case.*

How negotiations usually work

Negotiation with an insurance company is usually a series of offers and counteroffers. After your demand, the insurer makes an initial offer, usually well below your demand. You respond with a counteroffer that comes down from your demand, explaining why the insurer's evaluation is wrong. The insurer responds again, and so on. Each move should be in writing and should explain the reasons for your number. Be patient. It is common for several rounds to pass before the numbers get close, and it is common for the insurer to say an offer is "final" when it is not.

Before you begin, decide on your walk-away number—the lowest amount you would accept, after attorney fees, case costs, and liens, compared with what you would likely recover in a lawsuit. Do not share that number with the adjuster. If the insurer will not reach it, the negotiation has done its job by showing you that a lawsuit may be necessary.

> **Note**
>
> *If you are negotiating on your own: get every offer in writing, respond in writing, never accept an offer on the phone, and never sign a release until you understand exactly what you are giving up and how any liens will be paid (see Chapter 7). If the insurer makes a final offer that does not cover your losses, talk to an attorney before your deadline to file a lawsuit gets close.*

Deciding whether to file a lawsuit

If negotiations fail, the next step is to decide whether to file a lawsuit. You should always consult with an experienced personal injury attorney before making this decision. The right to a jury trial is one of the most important rights Americans have, and it should not be taken lightly. Factors to consider include:

1. How much more can you expect from a lawsuit?

A lawsuit makes the most sense when the expected result is much higher than the pre-lawsuit offer, because litigation takes time and costs money. For example, if you were offered $20,000 before a lawsuit and a successful lawsuit could produce $100,000, litigation may make sense even after fees and costs. On the other hand, if you were offered $30,000 and the likely result after litigation is $45,000 to $55,000, the added time, cost, and risk may not be worth it.

2. The costs, time, and risks of litigation

Litigation usually takes a year or more, sometimes several years, and involves significant expenses for things like court fees, depositions, and expert witnesses. There are also risks. In some states, if you reject a formal settlement offer from the defense and then do worse at trial, you can be ordered to pay some of the defense's costs—in California, for example, under Code of Civil Procedure section 998, which can include expert witness fees.

3. Whether you can collect a judgment

A judgment is only as good as your ability to collect it. In most injury cases, the money comes from insurance, which is why knowing the policy limits matters. If the at-fault party has little or no insurance and few assets, they may be "judgment-proof," and a large verdict may be impossible to collect. In that situation, your own underinsured motorist coverage may be the most important source of recovery.

4. The strength of your case

An attorney will evaluate the strength of your case by looking at the severity of your injuries, whether liability is clear, whether the defendant's conduct caused your injuries, the quality of your evidence, and whether there are defenses that could reduce or eliminate your recovery.

5. Your ability to handle the stress of litigation

Lawsuits are long, demanding processes. You may be required to answer written questions under oath, give a deposition, attend a medical examination by a doctor chosen by the defense, and eventually testify at trial. This is where a lawyer is especially helpful, because a personal injury attorney typically advances the case costs and handles the day-to-day work of the case. Even so, stay informed about what is happening with your claim.

Most cases settle. Only a small percentage of personal injury cases ever reach a jury trial. Many are resolved through negotiation during the lawsuit, or through mediation or arbitration. We explain how a lawsuit works in Chapter 7.

KEY TAKEAWAYS

- Open the claim with only basic, truthful facts, and send a letter requesting policy limits, employment status, evidence preservation, and confirmation of coverage and liability.
- Don't negotiate until your evidence is complete and you know the full extent of your injuries.
- A policy limits demand preserves room to negotiate and can set up a bad faith claim.

- Get every offer in writing, and never sign a release you don't fully understand.
- Deciding whether to sue depends on the likely result, the costs and risks, collectability, and the strength of your case.

Chapter 5

Dealing With Adjusters and Other Insurance Representatives

Mary was in a car crash and suffered serious injuries. She contacted the other driver's insurance company and filed a claim. The adjuster assigned to her case was very friendly and promised to help Mary get the compensation she deserved once she submitted evidence of her medical treatment.

Mary's doctor told her she needed surgery to get back on track. The surgery was expensive, and Mary's family could not afford it without help. Mary asked the adjuster whether the insurance company could pay for the surgery up front. The adjuster said no—the insurance company believed the surgery was related to a pre-existing condition, not the accident. The company offered her a lowball settlement for "minor" injuries.

When Mary pushed back, the adjuster repeated the company's position and accused her of trying to take advantage of the system. Mary felt humiliated and helpless, and she decided to hire an attorney. Her attorney helped her get the surgery done by a qualified orthopedic surgeon and negotiated a settlement that included her future medical care, disability, pain and suffering, and loss of earning capacity. Without an attorney, Mary likely would have accepted a small fraction of what her claim was worth.

As Mary's story shows, dealing with adjusters can be difficult. In this chapter, we discuss what adjusters do, what to expect from them,

how to handle your own insurance company, and tips for getting the best outcome.

Understand the adjuster's role

The adjuster is the insurance company employee responsible for evaluating your claim. The adjuster will ask how the accident happened and about your injuries, and will request documents such as medical records and bills, police reports, and photographs.

The adjuster's job is to resolve the claim for the insurance company—by denying coverage or liability where possible, or by getting you to accept as little as possible. Adjusters are professionals at evaluating claims in the insurance company's favor. If an adjuster gives you advice, following it will very likely save the insurance company money.

Most adjusters are decent people, and many would like to see injury victims treated fairly. But they work within company guidelines, settlement ranges, and software valuations, and they answer to supervisors. Adjusters are rewarded for following policy and controlling costs, not for getting you the best outcome.

What to expect from adjusters

First, expect a phone call. Early in the claims process, an insurance representative will call to ask about the accident and your injuries. Note the date, time, and the caller's name, and if possible their employee number and their supervisor's contact information.

Second, expect a request for a recorded statement. At our law firm, we rarely allow clients to give recorded statements to the other driver's insurance company before a lawsuit, and you are usually not required to give one to the other side's insurer. Your own insurance policy, however, may require you to cooperate with your insurer, which can include a statement. If you do give a recorded statement, have an attorney on the line. Be honest, including about your pain. For example, if you say your pain is zero when you actually feel constant pain, the insurance company will use that against you later.

Third, expect questions about your injury and the circumstances of the accident. You do not need to provide extremely detailed answers early on. While you are still treating, you won't have complete information yet, and your injuries and damages will be fully presented in the demand letter (see Chapter 4). Stay calm if the adjuster pushes for information you don't have.

Finally, understand what the adjuster is doing with this information. The adjuster will look for evidence that something other than their insured's negligence caused your injuries. If liability is clear, the adjuster will then look for ways to minimize your injuries and their impact on your life. Insurance adjusters are not on your side.

Medical examinations requested by the insurance company

At some point, an insurance company may ask you to be examined by a doctor it chooses. In a lawsuit, this is often called an independent medical examination, or IME, although the doctor is selected and paid by the defense. In an uninsured or underinsured motorist claim, your own policy may require you to attend one. Before a lawsuit is filed, the other driver's insurer usually cannot force you to attend an examination.

If you attend an exam, talk to your attorney first. Be on time, be polite, and be honest. Answer the questions asked, and do not exaggerate or minimize your symptoms. Assume you are being observed from the moment you arrive in the parking lot until the moment you leave. Afterward, write down how long the exam lasted, what the doctor did, and what questions were asked. In some states, including California, you may have the right to record the exam or bring an observer in certain circumstances. Your attorney can tell you what applies in your case.

Thoughts on your own insurance company

Usually, you are not on opposite sides from your own insurance company after an accident. That changes when you need to make a claim under your own policy—most often when the at-fault driver is uninsured, underinsured, or unknown.

If the person who caused the accident had no insurance or not enough to cover your damages, your path to full compensation may be the uninsured motorist (UM) or underinsured motorist (UIM) coverage on your own policy. Once you ask your own insurance company for money, it will start acting like the other driver's insurer. It may question your injuries, dispute the value of your claim, and do what it can to minimize what it pays—even if you have been a loyal customer for decades. Be careful about what you tell your own insurer early on, and consider having an attorney handle the claim.

Your own insurer does owe you special duties because you are its customer. In most states, an insurance company that unreasonably

denies or delays a claim by its own policyholder can be liable for bad faith. Washington's Insurance Fair Conduct Act, for example, allows a court to award up to three times the actual damages, plus attorney fees, when an insurer unreasonably denies a first-party claim for coverage or benefits.

Coverage disputes and reservation of rights letters

Sometimes an insurance company will accept a claim while sending its own insured a "reservation of rights" letter. This means the insurer is investigating the claim but may later deny coverage—for example, because the driver was not listed on the policy, was using the car for business, or caused the injury intentionally. A coverage dispute between the at-fault party and their insurer can delay your claim and affect who pays. If you learn of a coverage dispute, or if the insurer says there is no coverage at all, talk to an attorney. There may be other policies that apply, including the vehicle owner's policy, an employer's policy, an umbrella policy, or your own UM coverage.

Will a claim raise your premium?

People often ask whether making a claim on their own policy will raise their rates. The answer depends on your state. In California, insurers generally may not treat you as at fault for rating purposes unless you were principally at fault—at least 51% responsible—for the accident, and there are presumptions that protect drivers who were lawfully parked or rear-ended. Many states have similar protections for not-at-fault accidents, but not all do, and some insurers consider claims history in other ways. If your premium goes up after an accident you did not cause, ask your insurer in writing to explain why, and contact your state's department of insurance if you disagree.

Med-Pay, PIP, and your health insurance

Several types of coverage can help pay medical bills while your injury claim is pending:

- Medical payments coverage (Med-Pay) is optional coverage on many auto policies, including in California. It pays your medical bills up to a set limit, often a few thousand dollars, regardless of who was at fault. Your insurer may have the right to be reimbursed from your settlement.

- Personal injury protection (PIP) is broader coverage that can pay medical bills, lost wages, and other expenses regardless of fault. Some "no-fault" states require PIP. In Washington, insurers must offer PIP, and it is generally included unless you reject it in writing.
- Your health insurance can also pay for accident-related care. Using it often reduces the amount you owe, but your health plan may claim reimbursement from your settlement (see the discussion of liens in Chapter 7).

Know what coverage you have, and use it. Do not let the absence of a settlement keep you from getting treatment.

Protect yourself before the next accident

It is important to have uninsured and underinsured motorist coverage on your auto policy. Too often, we see injury victims who cannot recover full compensation because the at-fault driver carried only the state minimum—in California, $30,000 per person; in Washington, $25,000—and the victim did not have UM/UIM coverage of their own. This coverage does not work retroactively. You must have it before you are injured. Check your policy today, and carry as much UM/UIM coverage as you can reasonably afford.

Tips for dealing with an insurance adjuster

Adjusters say difficult things to every claimant. Do not let it discourage or anger you. Be polite but firm.

- Stay calm and be polite. Rudeness will not help your claim.
- Do not be intimidated or take their statements personally.
- Get the adjuster's employee number and supervisor's contact information.
- Keep a record of every phone call, email, text message, and letter, and keep copies in one folder.
- Follow up every phone call with an email summarizing what was discussed.
- If the adjuster says your claim is not valid, ask them to put their position and reasons in writing.

- Keep up with all medical appointments, therapy sessions, and prescriptions.
- Do not admit fault. Fault is a legal concept with many nuances, and in pure comparative fault states like California and Washington, you can recover even if you were partly at fault. Speak to an attorney before you accept a liability denial.
- Do not sign medical authorizations that give the insurer unlimited access to your entire medical history. Talk to an attorney about limiting them to relevant records.
- Before you accept any settlement offer, have an attorney review it.

When you should hire a personal injury attorney

If the adjuster is denying liability, questioning your injuries, ignoring your doctor's recommendations, or making offers that don't cover your medical bills, it is time to hire a personal injury attorney if you have not already. The same is true if your injuries are serious, you need surgery, or your own insurer is involved. An attorney can protect you from unfair tactics, build the evidence, and let you focus on getting better. Chapter 9 covers how to choose and work with an attorney.

Key Takeaways

- Adjusters work for the insurance company, and their job is to pay as little as possible.
- Don't give a recorded statement to the other side's insurer without an attorney.
- When you claim under your own policy, your insurer becomes your opponent—but it still owes you a duty of good faith.
- Know your Med-Pay, PIP, health insurance, and UM/UIM coverage, and carry enough UM/UIM.
- Put everything in writing, and never admit fault.

Chapter 6

Types of Damages that Can Be Recovered in a Personal Injury Case

When Melissa was sixteen, she was hit by a car while crossing the street. She suffered serious injuries, including a broken arm and a herniated disc, and needed surgery. The driver who hit her never stopped and was never identified. Unfortunately, hit-and-run accidents make up a significant percentage of pedestrian accidents.

Because the driver was never found, Melissa's family made an uninsured motorist claim under their own auto policy, which covered Melissa as a household member. Her attorney explained that she could recover damages for her medical expenses, her future medical care, and her pain and suffering. Because Melissa was a minor, her deadline to file a lawsuit would generally not begin to run until she turned eighteen in most states, but her family still had to meet the policy's short reporting and notice requirements. When the insurance company refused to pay fair value, the claim went to arbitration, as uninsured motorist claims often do, and Melissa was awarded compensation for her medical expenses and for her pain and suffering.

In a personal injury case, an injured person can recover damages for economic and non-economic losses. Economic damages are losses with a specific dollar value, such as medical expenses and lost wages. Non-economic damages compensate for losses like pain, suffering, and loss of enjoyment of life, which are harder to put a number on. In rare situations, punitive damages may also be awarded to punish the defendant.

Melissa's damages were both economic and non-economic. She did not receive punitive damages, which are rarely available in personal injury cases and would not have been available from her own insurance company in any event.

In this chapter, you will learn about each type of damages and how to prove them, including property damage, which is often the first part of a car accident claim to be resolved.

Economic (special) damages

Economic damages, also called special damages, are losses that can be calculated in dollars, such as medical bills, lost wages, and out-of-pocket expenses. If you missed work because of your injury, you can claim the wages you lost.

You can recover both past and future economic damages. The purpose of compensation in a personal injury case is to restore you to where you would have been financially had the accident never occurred. For example, if you earned $65,000 a year and it can be proven that your injuries will keep you from working for ten years, you can claim the lost income for those years, and an economist may be needed to calculate its present value.

Lost earnings include more than the paychecks you have already missed. If your injuries limit what you can do in the future—for example, a construction worker who can no longer do physical work, or a nurse who cannot lift patients—you may have a claim for loss of earning capacity, which is the difference between what you could have earned without the injury and what you can earn now. These claims often require testimony from your doctors, a vocational expert, and an economist. Self-employed people and gig workers can recover lost income too, but they need good records, such as tax returns, invoices, bank statements, and app earnings histories, to prove it.

Medical expenses are another major category. If your medical bills total $15,000, you can claim those costs, as well as the future costs of care you will need because of the injury, like physical therapy or future surgery. Future care is often calculated through a life care plan prepared by an expert. A life care plan is a report that estimates your anticipated future medical and care expenses based on your injury and age. In serious cases, a life care plan alone can amount to a six- or seven-figure sum.

How medical expenses are measured depends on your state. In California, for example, past medical damages are generally limited to the

amounts actually paid or owed for your care, rather than the full amounts billed. Other states, including Washington, generally allow recovery of the reasonable value of the medical services. This is one reason the way you pay for treatment can affect your claim, as we discuss in Chapter 7.

When trying to recover economic damages, have all of your documentation in order: medical bills, receipts, mileage logs, and records of lost wages. Insurance companies will often argue that your treatment was unnecessary or that you could have returned to work sooner. Remember, compensation for these items is reimbursement for costs you have incurred or will incur. It simply places you back where you would have been had the accident never occurred.

Economic damages can be the backbone of a personal injury case. Documentation of economic damages can justify a higher settlement demand or a decision to file a lawsuit.

There are also cases where an attorney may choose, as a trial strategy, not to emphasize the medical bills. For example, say you have a compelling case worth $1 million, but your medical bills, after health insurance discounts, are only $35,000. That low number may act as an anchor in the jury's mind. In that situation, your attorney may decide to focus the jury on the more significant non-economic damages. This is a difficult decision that should only be made with the guidance of an experienced trial lawyer.

Property damage, diminished value, and rental cars

In a car accident, your vehicle and personal property are part of your damages, and the property damage claim is usually handled separately from your injury claim and resolved first. You may be entitled to:

- The cost of repairs at a shop of your choice, or, if the car is a total loss, its actual cash value immediately before the accident, plus applicable taxes and fees.
- A rental car or compensation for loss of use while your car is being repaired or replaced.
- Diminished value. Even after a quality repair, a car with an accident history is often worth less. In many states, including California and Washington, you can make a diminished value claim against the at-fault driver's insurer. Support it with an independent appraisal.
- Damaged personal property, such as phones, car seats, and other items in the car. Many safety experts recommend replacing a child

car seat after a crash.

Be careful with property damage paperwork. Read every release before you sign it, and make sure it covers only your property damage—not your injury claim.

Non-economic (general) damages

Non-economic damages, also called general damages, compensate victims for non-monetary losses, including pain and suffering, physical impairment, disfigurement, mental anguish, emotional distress, anxiety, and loss of enjoyment of life. These losses are subjective, so they are not easy to calculate, but in serious cases they are often the largest part of the claim.

For example, losing the ability to walk or run does not come with a bill, but it is a fundamental life change that must be accounted for. Insurance companies know these damages can drive up the value of a case, so they work hard to minimize them, and claim-evaluation software often undervalues them.

To get full compensation for non-economic damages, you need evidence. The best way to show these damages is through stories and testimony. Consider a car crash victim who must take medication every day just to function, but the side effects cause drooling and a strange taste in her mouth. She can no longer enjoy a meal with friends. These are new problems that did not exist before the crash. That kind of testimony can be very powerful to an insurance company or jury because it shows the secondary effects of the injury.

Another example is a person who injured a knee in a bad fall. After surgery, they cannot get out of bed on their own or walk long distances. Routine tasks they used to take for granted are now difficult, and sometimes impossible.

These examples often come from everyday private moments, so keep a journal of how your injury has changed your life. At our firm, we advise all of our clients to keep a journal for this purpose. A template is in the appendix.

One of the best ways to prove non-economic damages is through before-and-after witnesses: family members, friends, co-workers, or anyone else who has regular contact with you and can describe how the injury has changed your life. This evidence is persuasive because the insurance company playbook calls for accusing injury victims of exaggerating. Witness testimony is often the difference between full

compensation and being shortchanged.

Pre-existing conditions and aggravation

Many injury victims worry that a prior injury or condition, like arthritis or an old back problem, will ruin their claim. It usually does not. In most states, you can recover for the aggravation of a pre-existing condition—the extent to which the accident made it worse. Courts often say a defendant "takes the plaintiff as they find them," which means a defendant is responsible for the harm caused even if you were more vulnerable than the average person. The key is honesty and evidence. Tell your attorney and your doctors about your prior condition, gather records from before the accident, and ask your doctor to explain how your condition changed after the accident.

Claims by family members

In many states, the spouse or registered domestic partner of a seriously injured person may have their own claim for loss of consortium—the loss of the injured person's companionship, affection, help around the home, and intimacy. Some states also allow claims for emotional distress by close family members who witnessed a loved one being seriously injured. These claims have their own rules and deadlines, so mention them to your attorney.

Surgery is another important factor, especially in orthopedic injury cases. If your doctor recommends surgery, think carefully about whether you will need it before you resolve your claim. If you settle and then have the surgery five, ten, or twenty years later, you cannot go back and ask for more compensation. There is no second bite at the apple. We discuss this further in Chapter 7.

Punitive damages

Punitive damages are intended to punish the defendant for especially wrongful conduct and to deter others. They are not available in every state. Washington, for example, generally does not allow punitive damages unless a specific statute authorizes them.

Where punitive damages are available, they are difficult to obtain. In California, for example, the plaintiff must prove by clear and convincing evidence that the defendant acted with malice, oppression, or fraud—far more than ordinary negligence. Examples where punitive damages may be available include:

- A defendant who acted with conscious disregard of the safety of others.
- A drunk driver, in some states.
- A company that knew about a serious danger and chose to ignore it.

Punitive damages vary widely, and many states limit them. The U.S. Supreme Court has also indicated that punitive awards that greatly exceed the compensatory damages—generally more than a single-digit ratio—may violate due process. Punitive damages are usually not covered by insurance, so collecting them can be difficult.

How to calculate the value of a personal injury claim

Calculating the value of a personal injury claim means estimating the amount of money that would make you "whole" again. Important factors include the severity of your injuries, how long your recovery takes, whether you needed surgery, whether your injuries are permanent, your economic losses, the strength of the evidence on liability, and the available insurance.

Past results in similar cases also matter. Attorneys look at settlements and verdicts for similar injuries in the same area to estimate a range. Every case is different, though, and a past result does not predict what your case will bring.

The bottom line is that no formula can tell you exactly what your claim is worth. An experienced personal injury attorney can use their experience and knowledge of past cases to estimate the value of your claim much more accurately than a calculator or an adjuster.

Key Takeaways

- Economic damages cover past and future medical expenses, lost earnings, and out-of-pocket costs. Document everything.
- Property damage claims can include repairs or total loss value, a rental or loss of use, and diminished value.
- Non-economic damages are proven through your own story, your journal, and before-and-after witnesses.
- Punitive damages are rare, require especially bad conduct, and

are not available in every state.

- No formula sets the value of your claim; the evidence does.

Chapter 7

How to Get the Maximum Amount of Compensation for Your Injuries

John was heading to work one morning when a careless driver merged into his lane on the freeway, causing a serious collision. John was rushed to the hospital with multiple injuries, including a broken arm and severe whiplash. The doctors told him he would need surgery and long-term physical therapy. His medical bills quickly passed $50,000.

The at-fault driver's insurance company offered John $50,000, telling him that was all it was willing to pay. John knew that would not even cover his future medical care, let alone his lost wages and pain and suffering. He contacted an attorney, who advised him to reject the offer and filed a lawsuit against the driver. The insurance company raised its offer, but it was still not enough, and John's attorney advised him to reject that offer, too.

The insurance company kept increasing its offer while John's attorney prepared the case for trial. Eventually, the insurer agreed to pay the full policy limits of $500,000, because it knew John had a strong case and was prepared to go to trial. The insurer had been testing John's determination. When he kept rejecting unreasonable offers, it knew he was serious.

> **Note**
>
> *This is a past result. Every case is different, and past results do not guarantee or predict a similar outcome in your case.*

Insurance companies often start with an offer far below what a claim is worth. In this chapter, we cover the steps that matter most in getting full compensation: getting legal help, meeting your deadlines, timing your medical treatment, understanding how your medical bills and liens affect your recovery, reading the settlement agreement carefully, and filing a lawsuit if necessary. (Gathering evidence and writing the demand letter are covered in Chapters 3 and 4.)

Speak to an attorney

If you settle your case without an attorney, you will likely leave money on the table. Insurance companies pay their adjusters and defense attorneys to limit what injured people receive. An experienced personal injury attorney knows how to counter their strategies, knows what similar cases are worth, and can file a lawsuit when the insurance company will not be reasonable. Find someone who lives and breathes personal injury law. We discuss how to find and choose an attorney in Chapter 9.

Know your deadline

The statute of limitations is the deadline to file a lawsuit. If you do not settle your claim or file a lawsuit before the deadline passes, you will generally lose your right to recover for your injuries forever, no matter how strong your case is. Insurance companies know this. Settlement negotiations do not stop the clock.

The deadline varies by state and by type of claim. In most states, it is two or three years from the date of injury for a general personal injury claim, and a few states allow only one year. For example:

- California: generally two years from the date of injury.
- Washington: generally three years from the date of injury.
- Florida: generally two years for negligence claims that arose after March 24, 2023 (it was previously four years).

There are important exceptions. Claims against government entities have much shorter deadlines to file a written claim—as short as six months in California (see Chapter 8). Medical malpractice, wrongful death, sexual assault, and claims involving minors have their own rules. Claims based on intentional acts can also have different deadlines; in Washington, for example, a claim for assault or battery generally must be filed within two years, even though the general deadline is three. For minors, the deadline

is generally paused, or "tolled," until the child turns eighteen in many states, including California and Washington, but not for every type of claim. The deadline may also be tolled in some other situations, such as when the injured person is legally incapacitated. A quick reference is in the appendix.

Never rely on a general rule. Have an attorney in your state confirm your deadline as early as possible.

Time your medical treatment wisely

The sooner you get medical treatment after an injury, the stronger your claim will be. While you need a diagnosis and prognosis, never make treatment decisions, like whether to have injections or surgery, based on what you think you can get in a settlement. Make decisions based on what is right for your health.

That said, timing matters. Unless your case can be settled for the full policy limits, try to avoid settling before you get treatment that your doctor has already recommended. When a doctor recommends treatment, consider carefully whether you will probably need it and whether your injury may get worse if you delay.

What you want to avoid is this: you decline a recommended surgery, thinking you can live with the pain, and settle your case. Ten years later, the pain has gotten worse, and you have the surgery. Because your case is settled, the at-fault party's insurance company is no longer responsible for the cost.

When you complete recommended treatment before settlement or trial, you can generally be compensated for its cost and for the pain and recovery that come with it. These procedures carry risks, and if complications happen before your case is resolved, you can be compensated for those, too.

How you pay for treatment affects your recovery

Many injured people worry about how to pay for treatment while their claim is pending. The main options are:

- Health insurance. Using your health insurance usually means your providers accept discounted rates, and you pay less out of pocket. Your health plan may then have a right to be reimbursed from your settlement.

- Med-Pay or PIP. If you have this coverage on your auto policy, it can

pay bills regardless of fault (see Chapter 5).

- Treating on a lien or letter of protection. Some doctors will treat you without payment up front in exchange for a promise to be paid from your settlement. This can allow you to get care you otherwise could not afford, such as surgery when you have no health insurance or a high deductible.

Treating on a lien has trade-offs. Lien providers often charge full, undiscounted rates, which can reduce what you take home if the case does not settle for enough. Insurance companies also attack lien-based treatment by arguing that the doctor has a financial interest in the case, and in some states, including California, a defendant may be able to obtain information about the provider's billing and any sale of the lien to a third party. Lien-based treatment can be the right choice, but make that decision with your attorney and get the terms in writing.

Understand liens and reimbursement claims

A lien is a legal right to be paid from your settlement. Before you receive your money, valid liens must be resolved. Common liens include:

- Medicare. If Medicare paid for any of your accident-related care, federal law requires that Medicare be repaid from the settlement. Ignoring a Medicare claim can lead to serious consequences for you and for your attorney. Future medical needs may also need to be considered in larger cases.
- Medicaid (Medi-Cal in California, Apple Health in Washington). These programs also have a right to be repaid, usually subject to reductions.
- Private health plans. Your health insurer may claim reimbursement. Many state laws limit these claims. In California, for example, many health plan liens are limited to the lesser of the plan's cost or one-third of the recovery if you have an attorney (one-half if you do not), and are reduced by your share of fault if a judge, jury, or arbitrator finds you were partly at fault. However, self-funded employer plans governed by the federal ERISA law can sometimes override state limits.
- Hospital liens. Many states let hospitals that provide emergency care assert a lien. In California, a hospital lien is generally limited to 50% of the recovery after certain prior liens are paid.

- Provider liens and letters of protection, as described above.
- Med-Pay and PIP reimbursement claims by your own auto insurer.

Liens can take a large share of a settlement if they are not handled properly. Experienced injury attorneys routinely negotiate liens down, sometimes significantly. This is one of the most valuable things an attorney does, and it is easy to overlook when you compare offers.

Where the settlement money goes

When comparing offers, focus on what you will actually take home—your net recovery—not just the headline number. Here is a simplified example of a $100,000 settlement in a case resolved without a lawsuit:

Item	Amount
Gross settlement	$100,000
Attorney fee ($33\frac{1}{3}\%$)	–$33,333
Case costs (records, filing, experts)	–$1,500
Medical liens and bills, after negotiated reductions	–$30,000
Net to the client	$35,167

In this example, the medical bills originally totaled $47,000, and the attorney negotiated them down to $30,000. That $17,000 reduction went directly to the client. As a rough rule of thumb, in many cases the client, the medical providers, and the attorney fee each end up with about a third of the settlement. The exact calculation depends on your fee agreement, your costs, and your liens, and your attorney should give you a written settlement statement showing every deduction before you receive your money.

Read the settlement agreement carefully

When you settle, you will be asked to sign a release. A release is a binding contract, and once you sign it, your claim is over. Read it carefully, and have an attorney review it. Watch for these terms:

- Scope of the release. The release should cover only the parties and the accident in your case. Be wary of language that releases unrelated people or claims, or your own insurance company if you may have an underinsured motorist claim.
- Unknown claims. Most releases cover injuries you do not yet know about. In California, releases often include a waiver of Civil Code section 1542, which means you are giving up claims for injuries you don't know about yet. This is why you should not settle before you understand your injuries.
- Indemnification and lien clauses. Most releases include an indemnification or "hold harmless" clause. It usually means you promise to pay any liens from your settlement—medical providers, health plans, Medicare—and to protect the defendant and its insurer if a lienholder later comes after them. Before you agree, know exactly what liens exist and how they will be paid.
- Medicare provisions. If you are a Medicare beneficiary, the release may include terms about Medicare's interests and future medical expenses. Make sure you understand them.
- Confidentiality and non-disparagement clauses. These are sometimes requested. Decide with your attorney whether they are acceptable.
- Payment terms. The agreement should state the amount and the deadline for payment. Most personal injury settlements are paid in a lump sum. In cases involving minors or very large recoveries, a structured settlement that pays over time may make sense, and settlements for minors usually require court approval.

If you can't reach a satisfactory agreement, consider taking the matter to court.

File a lawsuit if necessary

If the insurance company will not pay a fair amount, filing a lawsuit is often the most effective way to change its evaluation of your claim. A lawsuit puts the decision in the hands of a judge or jury rather than an adjuster, and it requires the defense to spend money and time defending the case. Many cases settle for more after a lawsuit is filed. A lawsuit also holds the responsible party accountable and helps protect future victims in your community.

Some people decide not to file a lawsuit because they don't think their case is strong enough to justify the time and expense, or because they are offered an amount that seems too much to risk at trial. These are legitimate decisions. Make them with an attorney, using the factors discussed in Chapter 4.

How a lawsuit works

To start a lawsuit, your attorney files a "complaint." The complaint tells the court and the person or company being sued (the "defendant") what the lawsuit is about and what relief you are seeking. The complaint must then be "served" on the defendant along with a "summons," which tells the defendant they must respond within a set time, usually 20 to 30 days depending on the state.

The defendant then files an "answer" admitting or denying the allegations. In most injury cases, the defendant's insurance company hires and pays a defense lawyer. If the defendant does not respond in time, the court may enter a default judgment.

Next comes "discovery," the process in which each side gathers information about the other side's claims and defenses. This may include written questions answered under oath ("interrogatories"), requests for documents, depositions (testimony given under oath outside of court), and a medical examination by a doctor chosen by the defense.

Many cases then go to mediation, where a neutral mediator helps the parties try to reach a settlement. If the case does not settle, it goes to trial, where a judge or jury hears the evidence and decides the outcome. Only a small percentage of cases actually go to trial.

What to expect at mediation

Mediation is a meeting, often a full day, where a neutral mediator, usually a retired judge or an experienced attorney, helps both sides try to settle. Many courts require it, and many cases settle there. Mediations are often held by video. The two sides usually sit in separate rooms, and the mediator moves back and forth carrying offers and arguments.

Expect the day to move slowly at first. Early offers are often far apart, and it is common for the gap to close only in the last hours. The mediator's job is to get a settlement, so the mediator will point out the risks of trial to both sides. That is normal and does not mean the mediator thinks your case is weak.

Your role is to be present, listen to your attorney's advice, and make

the final decision. Before mediation, talk with your attorney about your walk-away number, the likely range at trial, and how fees, costs, and liens will affect your net recovery. Nothing is final until you agree and sign. If the case does not settle, it continues toward trial, and many cases settle later.

A case from our files: from $705,000 to $1.5 million

Our client was walking toward the stairs in her building when she fell. The landlord had been painting the second-floor floors and stairs but had not put out any warning sign. She suffered a serious back injury and eventually needed a spinal cord stimulator implanted for her lumbar spine.

The landlord's insurance company denied liability, forcing us to file a lawsuit. It made no offer at all until the first mediation, where it offered $705,000—when our client's past medical bills alone were about $500,000. The insurer argued that our client's extensive pre-existing medical history explained her condition, and that the jury pool in that county was very conservative.

We kept building the case. Our investigation proved liability, and we retained experts on both liability and damages. We made multiple policy limits demands, setting up a potential bad faith claim if the insurer unreasonably refused to settle, worked to reduce the medical liens, and prepared the case for trial. At a second mediation, about 60 days before trial, the case settled for $1.5 million—more than double the insurer's first offer.

Why an attorney mattered: the insurer's first offer came only after a lawsuit was filed, and it was only about $205,000 more than the past medical bills. A person on their own could not realistically have prepared that lawsuit, hired experts to answer the pre-existing-condition argument, or created the pressure of policy limits demands and an approaching trial date. That pressure is what moved the number.

> **Note**
>
> *This is a past result. Identifying details have been omitted. Every case is different, and past results do not guarantee or predict a similar outcome in your case.*

What to expect at trial

If your case goes to trial, a jury will usually decide it. Trials in injury cases often last from a few days to two weeks or more. The trial begins with jury selection, followed by opening statements, the presentation of evidence, closing arguments, and the jury's deliberation and verdict. You will testify, and so may your doctors, expert witnesses, family members, and before-and-after witnesses.

Trial is the only way to have your case decided by members of your community instead of an insurance company. It also carries real risk. A jury can award more or less than the last offer, and either side may appeal. Your attorney will prepare you to testify and will explain each step.

How long does it take?

Every case is different, but this general timeline can help you plan:

- First weeks: medical treatment begins, the claim is opened, and evidence is preserved.
- Months 1 to 12 or more: medical treatment continues until you recover or your doctors can describe your long-term condition. Your property damage claim is usually resolved early.
- After treatment: the demand letter is sent, and the insurer usually responds within 30 to 60 days. Negotiations may take weeks or months.
- If a lawsuit is filed: discovery, mediation, and trial preparation typically take one to two years or more, depending on the court.
- After settlement: signing the release, receiving the funds, and resolving liens usually takes several weeks, and longer if Medicare or other complex liens are involved.

Simple claims with minor injuries may resolve in a few months. Serious injury cases often take one to three years. A fast settlement is rarely a full one.

Key Takeaways

- Get an attorney involved early, and confirm your filing deadline

right away.

- Don't settle before you've had treatment your doctors recommend, unless you are receiving the full policy limits.
- How you pay for treatment, and the liens that result, directly affect what you take home.
- Read every release carefully, especially the scope, unknown-claims, and indemnification terms.
- A lawsuit is often what moves an insurance company to pay fair value.

Chapter 8

Special Situations

Most injury claims follow the process described in the earlier chapters. Some situations, however, come with different rules, extra parties, or unusually short deadlines. This chapter covers the most common ones.

Claims against government entities

If you were injured by a city bus, a dangerous condition on public property like a pothole or broken sidewalk, a public employee driving a government vehicle, or another government entity, special rules apply. Before you can file a lawsuit, you usually must first file a written claim with the government entity, often on a specific form, within a short deadline.

- In California, a claim for personal injury against a public entity generally must be presented within six months after the injury. If the entity gives you written notice that the claim is rejected, you generally have six months from that notice to file a lawsuit. If you miss the six-month deadline, you can apply for permission to present a late claim, but the application must be made within a reasonable time and no later than one year after the injury, and time while the injured person was a minor still counts toward that year.
- In Washington, a claim against a local government must be presented on the standard tort claim form (or the entity's approved form), and you must wait 60 days after presenting the claim before filing a lawsuit. The deadline to sue is paused during that 60-day period. Claims against the State of Washington are presented to the Office of Risk Management and follow a similar 60-day rule.

- Federal government claims, such as a crash with a postal vehicle, generally must be presented in writing to the federal agency within two years under the Federal Tort Claims Act, and a lawsuit must be filed within six months after the agency mails a final denial.

These rules are strict and technical, and the deadline for minors is often not paused the way it is for other claims. If a government entity may be involved, speak to an attorney immediately.

Hit-and-run and uninsured drivers

If you were hit by a driver who fled, or a driver with no insurance, your own uninsured motorist (UM) coverage may pay for your injuries. In many states, UM coverage also protects you and your household members as pedestrians or cyclists. These claims have strict requirements, including short police-reporting deadlines for hit-and-runs (see Chapter 3) and prompt notice to your insurer. Many UM claims that do not settle are decided in arbitration rather than in court. Remember that your own insurer becomes your opponent in a UM claim (see Chapter 5).

Rideshare accidents (Uber and Lyft)

Rideshare insurance depends on what the driver was doing at the time of the crash:

- App off: only the driver's personal auto insurance applies, and many personal policies exclude rideshare driving.
- App on, waiting for a ride request: the rideshare company provides limited coverage.
- Ride accepted or passenger on board: the rideshare company generally must provide $1 million in liability coverage in both California and Washington.

In California, a new law, SB 371, reduced the uninsured and underinsured motorist coverage that rideshare companies must carry while a passenger is in the car, from $1 million to $60,000 per person and $300,000 per accident, beginning January 1, 2026. This means that if you are a rideshare passenger and an uninsured or underinsured driver causes the crash, there may be far less coverage available than before. Your own UM/UIM coverage may become an important source

of recovery. In Washington, rideshare coverage during a trip includes $1 million in liability coverage and underinsured motorist coverage of $100,000 per person and $300,000 per accident from the moment a passenger enters the vehicle until the passenger exits.

Rideshare claims often involve several insurance companies, so get the driver's information, take screenshots of the trip in your app, and report the crash in the app as well as to the police.

E-bikes and scooters

E-bikes and electric scooters have become common, and so have injuries involving them. These claims raise coverage questions that traditional bicycle and car accidents do not:

- If a car hits you while you are riding, the driver's liability insurance usually applies, and your own UM/UIM coverage may apply if the driver is uninsured or underinsured, depending on your policy.
- If you are hurt while riding a rented scooter or e-bike, the rental company's terms of service may include a waiver of claims and an arbitration clause, and its insurance may be limited. A defect in the device or a dangerous road condition may create other claims.
- If an e-bike or scooter rider hits you, there may be little or no insurance. Some homeowner's and renter's policies exclude motorized vehicles, and auto policies often do not cover e-bikes.
- Many states, including California and Washington, classify e-bikes into classes with different speed and age rules. A violation of those rules can affect who is at fault.

Photograph the device, keep it as it is after the crash, and save any app records of the rental or ride.

Self-driving cars

Self-driving vehicles, such as Waymo robotaxis, now operate on public roads in parts of California and other states, and cars with advanced driver-assistance features are everywhere. When a self-driving or driver-assisted vehicle is involved in a crash, the responsible party may be the driver, the company that operates the vehicle, the manufacturer, or a combination. These vehicles record detailed sensor and video data, which can be extremely valuable evidence, but the company controls it.

Send a preservation request right away and speak to an attorney about who may be responsible.

Injuries on the job

If you were hurt while working, your employer's workers' compensation insurance generally pays your medical care and part of your lost wages, regardless of fault. In most cases, workers' compensation is your only remedy against your employer. But if someone other than your employer caused your injury—for example, another driver who hit you while you were driving for work, or a property owner where you were making a delivery—you may also have a personal injury claim against that third party. That claim can include pain and suffering, which workers' compensation does not pay. The workers' compensation insurer will usually have a lien on the third-party recovery. Coordinating the two claims is complex, so talk to an attorney who handles both.

Slip and falls and other property injuries

If you were hurt because of a dangerous condition on someone else's property, such as a spill, a broken stair, poor lighting, or an uneven walkway, you may have a premises liability claim. In general, the property owner or the business in control of the property is responsible if it knew or should have known about the dangerous condition and failed to fix it or warn you. These cases depend heavily on evidence that disappears quickly: photographs of the condition before it is cleaned up, the store's incident report, witness names, the shoes you were wearing, and surveillance video. Report the fall before you leave, and photograph everything.

Dog bites

Many states hold dog owners strictly liable when their dog bites someone, meaning you do not have to prove the owner was careless. California and Washington both have dog-bite statutes of this kind, generally covering bites that occur in public places or when the victim is lawfully on private property. These claims are often paid by the dog owner's homeowner's or renter's insurance. Get medical treatment, report the bite to animal control, and photograph your injuries as they heal.

Sexual assault and abuse

Survivors of sexual assault and sexual abuse can bring a civil lawsuit for money damages. A civil case is separate from any criminal case. It does not depend on whether the abuser was arrested, charged, or convicted, and it uses a lower standard of proof. These cases are very different from the negligence claims discussed in most of this book, and they should always be handled by an experienced attorney.

Who may be responsible. In addition to the person who committed the assault, an institution or business may be legally responsible if its own negligence allowed the abuse to happen. Examples include employers, schools, churches, youth organizations, medical practices, hotels, apartment complexes, rideshare companies, and other businesses that failed to screen, supervise, or remove an abuser, ignored warning signs or prior complaints, or failed to provide reasonable security.

Insurance. Insurance policies usually exclude intentional acts, so the abuser's own insurance may not pay. But the liability insurance of an institution whose negligence contributed to the abuse often does cover claims against that institution. This is one reason these cases require a careful investigation.

Deadlines. The deadlines for sexual assault and abuse claims are different from ordinary injury deadlines, and they have changed several times in recent years.

- In California, a lawsuit for sexual assault that occurred when the survivor was an adult generally must be filed within the later of 10 years from the last act of assault or three years from when the survivor discovered, or reasonably should have discovered, that an injury or illness resulted from the assault.

- In California, there is no time limit to file a lawsuit for childhood sexual assault that occurred on or after January 1, 2024, including claims against an institution whose negligence was a legal cause of the abuse, and these claims do not have to be presented to a government entity before suit is filed. Claims for childhood sexual assault that occurred before 2024 are subject to different deadlines and special requirements, and a 2026 law (SB 577) changes some of those rules, including for claims against public entities.

- In Washington, there is no time limit for claims based on childhood sexual abuse that occurs on or after June 6, 2024. For earlier abuse, the deadline is generally three years from the abuse or from when the

survivor discovered the connection between the abuse and the injury, and the time does not run until the child turns eighteen. Claims by adult survivors for assault and battery generally must be filed within two years, while negligence claims against others are generally subject to the three-year deadline.

Privacy and protection. Many survivors worry about their privacy. Courts often allow survivors to file under a pseudonym such as "Jane Doe," and many states limit evidence about a survivor's sexual history. In California, for example, a defendant generally may not use evidence of the plaintiff's sexual conduct to try to prove consent or to argue that the plaintiff was not harmed.

Evidence. Save text messages, emails, social media messages, photographs, journals, and the names of anyone you told about the abuse. Medical and counseling records and any reports made to police, an employer, a school, or another institution can be important evidence.

Support comes first. If you have experienced sexual assault, you do not have to decide anything about a lawsuit right away. Talking with a counselor or advocate can help. The National Sexual Assault Hotline is available 24 hours a day at 1-800-656-4673.

Wrongful death

When negligence causes a death, the law allows certain family members to bring a wrongful death claim for their own losses, such as the loss of financial support and the loss of their loved one's love, companionship, and guidance. Who may bring the claim and what damages are available depend on state law.

- In California, wrongful death claims may generally be brought by the surviving spouse or domestic partner, children, and certain other heirs. A separate "survival" claim belongs to the person who died and is brought by their estate. For survival claims filed on or after January 1, 2026, California no longer allows recovery for the deceased person's pain and suffering, after a temporary law permitting those damages expired.
- In Washington, a 2019 law expanded who may recover. Parents and siblings may now bring a claim when there is no spouse, domestic partner, or child, without having to prove they were financially dependent on the person who died.
- The deadline to file is generally two years in California and three

years in Washington, but government claims and other exceptions can shorten it.

Wrongful death cases are complex and emotionally difficult. If you have lost a loved one, speak with an experienced attorney about your family's rights.

Key Takeaways

- Government claims have very short deadlines and special forms—act immediately.
- Rideshare, e-bike, scooter, and self-driving car claims often involve multiple insurers and unusual coverage gaps.
- In California, rideshare UM/UIM coverage dropped sharply in 2026, making your own UM/UIM coverage more important.
- Sexual assault and abuse claims have their own deadlines, often much longer, and institutions may share responsibility.
- Wrongful death laws vary widely by state and changed recently in both California and Washington.

Chapter 9

Hiring a Personal Injury Attorney

Imagine that you are involved in a car accident that wasn't your fault. After seeking medical attention, you file a claim with the insurance company. The insurance company quickly denies your claim, saying its insured was not responsible. Or maybe it accepts liability, but its offer is so low that it doesn't even cover your medical bills. It supports the lowball offer by arguing that you were partly at fault, or that the accident was "low impact" and could not have caused your injuries. In other words, it accuses you of lying or exaggerating.

Insurance companies use one or more of these strategies—sometimes called "deny, delay, and defend"—every day. At this point, you may be feeling overwhelmed and unsure of what to do next. This is where a personal injury attorney comes in. In this chapter, you will learn what a personal injury attorney does, when to hire one, what it costs, how to choose one, and how to work with your attorney.

What is a personal injury attorney?

A personal injury attorney represents people who have been injured and helps them get compensation for their injuries. Attorneys who focus on personal injury regularly oppose the same insurance companies you are dealing with, and they know how those companies evaluate and negotiate claims. Your attorney's role is to guide you through the claims process, build the evidence, deal with the insurance companies, and, if necessary, take your case to court.

When should you hire a personal injury attorney?

The earlier you hire an attorney, the better. Evidence needs to be gathered and preserved as soon as possible after an accident, and some deadlines, like hit-and-run reporting requirements and government claim deadlines, are very short. An attorney can also handle communications with the insurance companies so that you avoid saying something that hurts your case and can focus on getting better.

You should hire an attorney right away if any of the following apply: your injuries are serious or require surgery; liability is disputed; a government entity, commercial vehicle, rideshare, or multiple parties are involved; the at-fault driver is uninsured or underinsured; a death occurred; or the insurance company is delaying, denying, or offering less than your medical bills. Even if you are hoping to avoid a lawsuit, an attorney can often help resolve your claim without one.

How much does a personal injury attorney cost?

Cost is often the first question people ask. Most personal injury attorneys work on a contingency fee basis. This means the attorney is paid a percentage of the total recovery (the gross settlement or verdict) and is paid only if you recover money. You do not pay an hourly fee or a retainer up front.

Fees are negotiable, but common fees are about one-third of the gross recovery if the case is resolved without a lawsuit, and often 40% or more if a lawsuit is filed, because litigation involves much more work, time, and risk. Most personal injury attorneys also advance the costs of the case, such as filing fees, medical records, depositions, and expert witnesses. Those costs are usually reimbursed from the recovery. What happens to costs if there is no recovery depends on your agreement, so ask.

In most states, including California and Washington, contingency fee agreements must be in writing. Before you sign, make sure you understand:

- The percentage, and whether it changes if a lawsuit is filed or the case goes to trial.
- Whether the percentage is calculated before or after case costs are deducted.
- Who pays the costs if you do not recover anything.
- How liens and medical bills will be handled at the end of the case.

Also confirm that your attorney is licensed in the state where your accident happened.

What are the benefits of working with a personal injury attorney?

Some people choose to represent themselves. That can be a risky decision, especially in cases with serious injuries. The main benefits of working with an experienced personal injury attorney are:

1. Knowledge of the law and the claims process, including deadlines, coverage, fault rules, and bad faith law in your state.
2. Evidence. Your attorney knows what evidence your case needs and how to preserve it before it is lost.
3. Negotiation. Your attorney knows what similar cases are worth and how to counter insurance company tactics.
4. Leverage. An attorney who is prepared to file a lawsuit and go to trial changes how the insurance company values your claim.
5. Protection. Your attorney handles communications with insurers, reviews settlement agreements, and makes sure you don't sign away rights you didn't mean to give up.
6. Lien resolution. Your attorney negotiates medical liens and reimbursement claims, which can significantly increase what you actually take home.

At my law firm, JSM Personal Injury Law Firm, we have years of experience helping injury victims get the best outcome possible. We understand how difficult these cases are, and we work hard for every client who walks through our doors.

What should you look for in a personal injury attorney?

When choosing a personal injury attorney, consider these factors:

1. Experience. Look for an attorney who handles personal injury cases regularly and has experience with injuries and situations like yours.
2. Licensing and location. Your attorney must be licensed in the state where your claim will be pursued. Technology lets many cases be

handled remotely, but a local attorney may know the local courts, judges, and rules.

3. Availability. Communication matters. This is a common problem at high-volume firms, where you may be one of thousands of clients and only hear from the firm when it is time to sign.

4. Caseload. Ask who will actually handle your case day to day. At very high-volume firms, much of the work may be done by non-attorney staff, and the attorney may know little about your file when it counts.

5. Experience with insurance companies and trial. The other side will have an insurance company and a defense law firm. You want someone who knows how they operate and is willing to take your case to trial if necessary.

6. How they charge. Most personal injury lawyers work on a contingency fee. Be cautious about any personal injury lawyer who asks for a large payment up front.

7. No guarantees. Be wary of any attorney who guarantees results. Nobody can control the other side, the evidence, or a jury, so no ethical attorney can promise an outcome.

8. Personal qualities. Choose someone who listens, explains things clearly, and treats you with respect.

9. Your gut feeling. If you feel comfortable with an attorney after meeting them, that is usually a good sign.

The best attorney for you is not always the one who has been practicing the longest. Look for someone with the experience, skill, and drive to fight for you and your case.

Questions to ask at your consultation

Bring your documents—the police report, photographs, insurance information, medical records you have, and any letters from insurance companies—and ask:

- How many cases like mine have you handled, and how did you approach them?
- Who will be my main point of contact, and who will work on my case day to day?

- How often will I receive updates, and how quickly do you return calls?
- What are the strengths and weaknesses of my case?
- What is my deadline to file a lawsuit?
- What is your fee, and does it change if a lawsuit is filed? How are costs handled?
- How do you handle medical liens at the end of the case?
- Are you prepared to take my case to trial if necessary?

What to expect after you hire an attorney

Once you sign a fee agreement, your attorney will typically notify the insurance companies that you are represented, so that adjusters contact the attorney instead of you. Your attorney will open or take over the claims, send preservation and policy limits letters, and begin gathering the police report, photographs, witness information, and your medical records and bills. Your attorney may help you find appropriate medical care and will help you deal with property damage and rental car issues.

Your main job during this phase is to focus on your recovery: follow your doctors' recommendations, keep your appointments, and keep your journal. When your treatment is complete or your doctors can describe your long-term condition, your attorney will prepare and send the demand, negotiate, and keep you informed of every offer. The decision to accept or reject an offer is always yours. If the case does not settle, your attorney will discuss filing a lawsuit with you and explain what to expect.

How to work with your personal injury attorney

Once you have hired an attorney, the attorney will guide you through each step of the process. You still play an essential role. Here is how to work with your attorney effectively.

Respond promptly to calls and emails

Your attorney works for you and has a duty to keep you informed. Return your attorney's calls and emails promptly. Your attorney cannot accept a settlement without your authorization, so slow responses can delay your case and weaken your attorney's negotiating position.

Be honest with your attorney

Your attorney can only get you the best result if they know all the facts, including the bad ones. Tell your attorney about prior injuries, prior claims, and anything else that might matter, even if you think it is unrelated. If your attorney learns about something later—especially from the insurance company—it can hurt your case and your credibility.

Cooperate with your attorney

Your attorney will ask you to help gather evidence, keep your medical appointments, keep your journal, and possibly attend examinations or meetings with experts. Do what they ask, and let them know right away if anything changes, such as new symptoms, new treatment, or a new job. Follow your attorney's advice about social media and about talking to anyone about your case.

Remember, your attorney works for you. Don't hesitate to contact them with questions or concerns.

If you are unhappy with your attorney

Talk to your attorney first. Many problems come from communication gaps that can be fixed with a direct conversation about how often you will hear from them and what is happening with your case. If that does not work, you have the right to change attorneys at any time. Your new attorney can usually handle the transition, including obtaining your file. Your former attorney may be entitled to a portion of the fee for the work they did, but that is usually paid out of the total fee at the end of the case rather than as an additional charge to you. Avoid waiting until a deadline is close to make a change.

How do you find a personal injury attorney?

There are several ways to find a personal injury attorney. Ask friends and family for recommendations. Search online, and read reviews carefully. Your state or local bar association may also offer a lawyer referral service. Before hiring an attorney, check their license and any disciplinary history with the state bar, and meet with them to ask the questions in this chapter. Most personal injury attorneys offer a free initial consultation.

If you have been injured in California or Washington, JSM Personal Injury Law Firm can help. Our practice areas range from car accidents and spinal cord injuries to slip and falls and traumatic brain injuries. We

understand how emotionally and physically difficult these cases can be, and we will fight hard to get you the best outcome possible.

Conclusion

After years of battling insurance companies on behalf of injured people, I wrote this book because I want to help personal injury victims avoid the injustice I have seen so many people suffer. Making a personal injury claim can be stressful. You may wonder how the insurance company will respond, whether you will receive a fair settlement, or whether your claim even has merit. My hope is that you now understand your rights, the tactics insurance companies use to limit claims, and the steps that lead to the best outcome.

I founded JSM Personal Injury Law Firm with the vision of using the power of justice to make our communities safer. One way to do that is to give accident victims the information they need to level the playing field against insurance companies. This book is one more tool toward that goal.

— Jamal S. Mahmood, Esq.
Founder, JSM Personal Injury Law Firm

Thank you for reading this guide. If you have been injured in an accident caused by someone else's negligence and would like to talk with a personal injury lawyer about your case, please contact us for a free consultation:

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(JSM Injury Firm APC)
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Irvine, California 92614
Main Line: (949) 404-4826
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Appendix

Tools, Templates, and Quick References

Important

Important: read before using this appendix.

The checklists, templates, sample letters, and deadline chart in this appendix are general educational tools. They are not legal advice and are not a substitute for an attorney. They may not fit your situation, may not reflect the current law in your state, and do not cover every deadline, requirement, or exception that could apply to your claim.

Using these tools does not create an attorney-client relationship with the author or JSM Personal Injury Law Firm (JSM Injury Firm APC). If you use them without an attorney, you do so at your own risk, and the author and JSM Personal Injury Law Firm are not responsible for the outcome of your claim, for any missed deadline, or for any loss resulting from their use.

Before you send anything to an insurance company, sign anything, or rely on any deadline in this book, talk with a licensed attorney in the state where your injury happened.

A. Post-accident checklist

At the scene, if you are able:

- ☐ Check for injuries and call 911 if anyone is hurt.
- ☐ Call the police and ask for a report number. For a hit-and-run, report it to the police immediately (within 24 hours in California).
- ☐ Exchange names, phone numbers, driver's license numbers, license plates, and insurance information.
- ☐ Photograph the vehicles, the scene, road conditions, traffic signals, and your injuries.
- ☐ Get names and phone numbers of witnesses.
- ☐ Look for cameras: dashcams, doorbell cameras, and business surveillance.
- ☐ Do not admit fault or discuss your injuries in detail.

In the first days:

- ☐ Get medical care, and tell your doctors about every symptom.
- ☐ Report the accident to your own insurance company, sticking to basic facts.
- ☐ Talk to a personal injury attorney before giving any recorded statement.
- ☐ Send preservation requests for video and vehicle data.
- ☐ Stop posting on social media. Do not delete anything.
- ☐ Start your pain and impact journal and your call log.
- ☐ Keep every bill, receipt, and record of missed work.
- ☐ Find out whether a government entity is involved. If so, calendar the claim deadline immediately.

B. Insurance call log

Use one line for every conversation, then email the person a short summary to confirm it.

Date and time	Who (company, name, ID no.)	What was said	Email sent?

Confirming email script: "Thank you for speaking with me today at [time]. This email confirms that we discussed [summary]. You told me [what they said]. Please let me know in writing if anything in this summary is incorrect."

C. Sample letter to the insurance adjuster (sent after the claim is opened)

[Date]

[Adjuster name], [Insurance company], [Address or email]

Re: Claimant: [Your name] | Your insured: [Name] | Claim no.: [Number] | Date of loss: [Date]

Dear [Adjuster name]:

I am writing regarding the claim referenced above. Please provide the following in writing within 30 days:

1. The bodily injury liability limits of every policy that may provide coverage for this loss, including any excess or umbrella policies.
2. Whether your insured was acting within the course and scope of any employment or business at the time of the accident, and if so, the identity of the employer and its insurer.
3. Confirmation that your company and your insured will preserve all evidence related to this accident, including photographs, video, vehicle data, phone records, statements, and the vehicle itself.

4. Confirmation of whether coverage and liability have been accepted, and if not, the specific reasons.

Please direct all future communications regarding this claim in writing to me at the address above.

Sincerely,
[Your name]

D. Demand letter outline

1. **Introduction:** who you are, the claim number, and the purpose of the letter.
2. **Facts and liability:** how the accident happened, the evidence of fault (police report, photos, witnesses, video), and the legal duty that was breached.
3. **Injuries and treatment:** a chronological summary of each provider, diagnosis, and treatment, with key quotes from your medical records.
4. **Future care:** any recommended future treatment and its expected cost.
5. **Economic damages:** a table of medical bills, lost wages, and out-of-pocket costs, with supporting documents attached.
6. **Non-economic damages:** concrete examples of how the injury has changed your daily life, supported by your journal and statements from before-and-after witnesses.
7. **Demand:** a policy limits demand, or a specific amount within the limits.
8. **Deadline:** a reasonable date for a written response, commonly 30 days.
9. **Enclosures:** a numbered list of every document attached.

E. Pain and impact journal

Write a short entry every day for the first several weeks, then at least weekly. Be specific and honest.

- Pain level today (0 to 10), where, and what made it better or worse.

- Sleep: how many hours, and how often you woke up from pain.
- What you couldn't do today, or could only do with pain or help.
- Work: hours missed, tasks you couldn't perform, accommodations needed.
- Family and social life: events missed or cut short; how the injury affected your relationships.
- Medications and side effects.
- Appointments attended and what the provider told you.
- Emotions: frustration, anxiety, fear, sadness, or trouble concentrating.

F. Important deadlines quick reference

These are general rules only. Exceptions apply, laws change, and other states have different rules. Confirm your deadline with an attorney in your state.

Deadline	**California**	**Washington**
General personal injury lawsuit	2 years from injury	3 years from injury
Claim against a local government	Written claim within 6 months; generally 6 months to sue after written rejection	Standard tort claim form; wait 60 days before suing (deadline paused meanwhile)
Hit-and-run UM claim	Police report within 24 hours; physical contact required; sworn statement to insurer within 30 days after that	Phantom-vehicle claims: report within 72 hours plus independent corroboration
Minors	Lawsuit deadline generally paused until 18, but not for the 6-month government claim	Lawsuit deadline generally paused until age 18

Deadline	California	Washington
Wrongful death	Generally 2 years from death	Generally 3 years from death
Federal government (FTCA)	Written claim to the agency within 2 years	Written claim to the agency within 2 years
Childhood sexual abuse	No time limit if abuse occurred on or after Jan. 1, 2024	No time limit if abuse occurred on or after June 6, 2024

G. Glossary

Actual cash value: What a vehicle or other property was worth immediately before the loss.
Adjuster: The insurance company employee who evaluates and negotiates your claim.
Bad faith: An insurance company's unreasonable failure to pay or settle a claim. It can expose the insurer to liability beyond its policy limits.
Claimant: The injured person making a claim.
Comparative fault: A rule that reduces your recovery by your percentage of fault.
Contingency fee: An attorney fee that is a percentage of the recovery and is paid only if you recover.
Covered loss: An event the insurance policy pays for.
Deposition: Testimony given under oath outside of court, usually recorded by a court reporter.
Diminished value: The loss in a vehicle's market value because of its accident history, even after repairs.
Discovery: The process in a lawsuit where each side obtains information from the other.
Economic damages: Losses with a dollar value, such as medical bills and lost wages. Also called special damages.
Indemnification: A promise to cover someone else's losses. In a release, it usually means you promise to pay liens and protect the defendant from lienholders.
Lien: A legal right to be paid from your settlement, such as by a hospital, health plan, or Medicare.
Med-Pay: Optional auto coverage that pays medical bills regardless of

fault.
Mitigation of damages: Your duty to take reasonable steps to keep your losses from getting worse.
Non-economic damages: Losses like pain, suffering, and loss of enjoyment of life. Also called general damages.
PIP (personal injury protection): Auto coverage that pays medical bills, lost wages, and other expenses regardless of fault.
Policy limits: The maximum amount an insurance policy will pay.
Release: The contract you sign to settle your claim, giving up the right to pursue it further.
Statute of limitations: The deadline to file a lawsuit.
Subrogation: An insurer's right to be repaid from your recovery for benefits it paid you.
Tolling: Pausing the statute of limitations, such as for a minor.
UM/UIM: Uninsured and underinsured motorist coverage on your own policy, which pays when the at-fault driver has no insurance or not enough.

H. Frequently asked questions

How much is my case worth? It depends on your injuries, treatment, economic losses, the evidence of fault, and the available insurance. No formula can tell you. An experienced attorney can estimate a range once your treatment is far enough along.
Should I accept the first offer? Rarely. First offers are usually made before the insurer has to account for the full extent of your injuries. Never accept an offer before you understand your injuries and what liens must be paid.
Do I have to give a recorded statement? You are usually not required to give one to the other driver's insurer. Your own policy may require you to cooperate with your insurer. Talk to an attorney first either way.
Will I have to go to court? Probably not. Most cases settle, often without a lawsuit. If a lawsuit is filed, most of those cases still settle before trial.
What if I was partly at fault? In pure comparative fault states like California and Washington, you can still recover, reduced by your share of fault. Other states have different rules (see Chapter 2).
What if the other driver had no insurance? Your own uninsured motorist coverage may pay. Report the accident promptly and notify your insurer.
How long will my case take? Simple cases may take a few months. Serious injury cases often take one to three years (see Chapter 7).

Can I switch lawyers? Yes. Your former attorney may be entitled to part of the fee, which is usually resolved from the final fee rather than paid separately by you.

Who pays my medical bills while my case is pending? Usually your health insurance, Med-Pay or PIP, or a provider who agrees to wait for payment from your settlement. The at-fault driver's insurer generally does not pay as you go.

Is the money I receive taxable? Compensation for physical injuries is generally not taxable under federal law, but some portions, such as interest and punitive damages, may be. Ask a tax professional.